No. 88-961

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

MICHAEL L. SCHMIDT,

Petitioner,

vs.

STATE OF GEORGIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF GEORGIA

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QUESTION PRESENTED FOR REVIEW

Whether the Georgia Court of Appeals, by finding that the facts and circumstances presented here established probable cause for the petitioner's arrest, has completely abrogated any Fourth Amendment protection afforded motorists traveling on interstate highways through the State of Georgia.

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF GEORGIA

The petitioner, Michael L. Schmidt, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Court of Appeals for the State of Georgia entered in this proceeding on July 7, 1988.

OPINION BELOW

The opinion of the Court of Appeals of Georgia, reported at 372 S.E. 2d 440 (Ga. App. 1988), appears in the Appendix hereto. No opinion was rendered by the Supreme Court of Georgia in denying petitioner's petition for Writ of Certiorari to that Court.

JURISDICTION

The judgment of the Court of Appeals of Georgia, affirming petitioner's conviction dated September 24, 1987, was entered on the 7th day of July, 1988. The Court of Appeals denied a timely motion for rehearing on July 28, 1988. Thereafter, on September 16, 1988, the Georgia Supreme Court denied a petition for Writ of Certiorari. A timely motion for rehearing was denied by the Supreme Court on October 5, 1988. The jurisdiction of this Court is invoked pursuant to Title 28 United States Code, Section 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the Constitution of the United States, as applied to the states by the Fourteenth Amendment, provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

STATEMENT OF THE CASE

During the early morning hours of November 4, 1986, Georgia State Trooper Michael Ralston observed a 1986 Ford Thunderbird, with Illinois plates, driven by the petitioner, Michael Schmidt, traveling northbound on Interstate 75. Because the vehicle was allegedly traveling at 64 miles per hour in a 55 mile per hour speed zone, at approximately 2:18 a.m., Trooper Ralston stopped the vehicle for speeding. The petitioner exited his vehicle and, upon the trooper's request, produced a valid Illinois driver's license and a rental agreement for the automobile. The petitioner was informed that he had been stopped for *speeding*.

At this time Mr. Schmidt stated that he was a college student in Illinois, and that he had traveled to Florida to purchase a car because he had heard they were cheaper in Florida. According to Trooper Ralston, Mr. Schmidt only mentioned traveling to the Tampa and Orlando areas in search of a new car. Ralston admitted, however, that at the preliminary hearing he testified that Schmidt "made the trip specifically to the Tampa area and some other parts of Florida." Moreover, the warrant affidavit, prepared by Ralston at the time of the stop, indicated that Mr. Schmidt had visited "Tampa and other parts of Florida to look for a personal vehicle."

After issuing a written warning for the alleged speeding violation, with the aid of his flashlight, Trooper Ralston visually observed the interior of petitioner's vehicle. In the rear of the passenger compartment, he saw a pillow, a blanket, a small travel bag, and some fast food trash (there were two roadmaps on the front seat). Then,

though admittedly having seen no contraband in the car, Trooper Ralston asked Schmidt's consent to search the car ". . . because of the suspicion I had that it may be possible that a crime would be afoot."

Although indicating that he was in a hurry, Schmidt verbally consented to the search and signed a written consent to search form at 2:30 a.m. Schmidt sat in the rear of the patrol car while Ralston searched Schmidt's vehicle. Ralston recovered two roadmaps with alternate routes between Miami and Chicago highlighted in yellow. He found two motel bills, one of which indicated that Schmidt had stayed (in his own name) in a Miami hotel from October 31 to November 3. He also found the aforementioned blanket, pillow, travel bag, fast food trash, and saw a radar detector on the dash. Ralston then removed the ignition key, exited the vehicle and tried to open the trunk.

When that key failed to open the trunk, Ralston asked Schmidt if he had the key. Though claiming that Schmidt told him it was the only key he had been given, Ralston admitted that at the preliminary hearing he testified that Schmidt "merely stated he did not have a key to the trunk." When Ralston advised Mr. Schmidt that he wished to search the trunk by removing the back seat, Schmidt withdrew his consent. The whole process, from signing the consent form to revocation of consent, took ten to fifteen minutes. Ralston honored the request not to remove the back seat of the rental vehicle, but advised Schmidt that he would have to be detained until the arrival of a drug detection dog and a magistrate.

The drug dog and his handler arrived approximately thirty minutes after Mr. Schmidt had revoked his consent to search. According to Leroy Green, the handler, they arrived at 3:11 a.m. Though Trooper Ralston claimed that

"the dog or handler would not have been allowed to have gone into the vehicle," and could not recall leaving the doors open, both Green and Schmidt clearly stated that the dog's head entered the car through the open door on the passenger side of the car, and alerted to the rear seat area. After the alert by the drug dog was added to the affidavit for search warrant, the warrant was signed at the scene by the magistrate at 3:35 a.m. Shortly thereafter, a large quantity of cocaine was discovered in the trunk of the car.

The petitioner filed a pretrial motion to suppress evidence seized from the rented automobile he was driving on November 4, 1986. That motion raised four separate bases for suppression. After considering the evidence presented, the arguments of counsel, and a brief submitted on petitioner's behalf, the trial court, without making factual findings of any kind, ruled:

> "Now, this Court finds Trooper Ralston's stop of Defendant's vehicle to be a valid stop; and, further, that Defendant freely and voluntarily consented to the search of his vehicle. Therefore, the Defendant's Motion to Suppress Evidence is denied."

After the denial of the motion, a waiver of petitioner's right to a jury trial, and the parties' stipulations to the transcript of the motion to suppress and to the lab report (which indicated that the substance recovered from the petitioner's trunk was 4002 grams of cocaine), the petitioner was convicted, sentenced to 25 years imprisonment, and fined $500,000.

Petitioner's conviction was affirmed by a sharply divided* Georgia Court of Appeal. The Court of Appeals first ruled

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* Four justices joined the opinion of the Court, one justice concurred in the judgment and four justices dissented.

that holding petitioner for thirty minutes awaiting the arrival of a drug detection dog was *not* a valid detention pursuant to *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L. Ed. 2d 889 (1968), and its progeny, *Schmidt*, 372 S.E. 2d at 442-43. The Court went on, however, to rule that Trooper Ralston had reasonable cause to believe that the petitioner was transporting contraband *prior* to the arrival of the drug detection dog, and therefore, that the seizure and subsequent search was valid. *Schmidt*, 372 S.E. 2d at 443.

Petitioner's subsequent requests for relief in both the Court of Appeals and the Supreme Court of Georgia, as previously set forth in the jurisdictional statement, were denied.

The petitioner now comes before this Honorable Court, respectfully submitting that the decision below does greivous injury to the protections afforded *all* citizens by the Fourth Amendment to the Constitution of the United States.

REASONS FOR GRANTING THE WRIT

THE DECISION BELOW HAS SO GROSSLY EXPANDED THE DEFINITION OF PROBABLE CAUSE, THEREBY CONFLICTING WITH NEARLY EVERY DECISION BY THIS COURT DELINEATING THAT CONCEPT, SO AS TO VITIATE THE PROTECTION AFFORDED EVERY CITIZEN BY THE FOURTH AMENDMENT.

The proscription of the Fourth Amendment against unreasonable searches and seizures was meant to protect each and every citizen from arbitrary intrusions into their privacy and personal autonomy. The fundamental nature

of this absolute right cannot be questioned. *See Union Pacific R. Co. v. Botsford*, 141 U.S. 250, 11 S.Ct. 1000, 35 L. Ed. 734 (1891). Moreover, as this Court stated in *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L. Ed. 2d 660 (1978), one does not forfeit his Fourth Amendment rights when he steps off the sidewalks into his automobile.

Hostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment, and decisions immediately after its adoption affirmed that "common rumor or report, suspicion, or even strong reason to suspect" was not adequate to support a warrant for arrest, *Dunaway v. New York*, 442 U.S. 200, 212, 99 S.Ct. 2248, 2256, 60 L. Ed. 2d 824 (1978). Probable cause exists only where, based upon objective facts and circumstances, a man of reasonable caution would believe that a crime has been or is being committed. *Brinegar v. United States*, 338 U.S. 160, 175-76, 69 S.Ct. 1302, 1310-11, 93 L. Ed. 1879 (1949). A detention unsupported by probable cause is unlawful, and evidence subsequently discovered by the search cannot be used to validate the probable cause judgment upon which the illegality of the search depends. *Whitely v. Warden*, 401 U.S. 560, 567, 91 S.Ct. 1031, 28 L. Ed. 2d 306 (1970).

In the instant case, the Georgia Court of Appeals held that the detention of the petitioner, between the time he withdrew his consent and the arrival of the drug detection dog was not a valid *Terry* stop. Even if there had been an articulable basis for a brief investigative detention, the prolonged duration of the detention exceeded the type of intrusion sanctioned by *Terry*. *Schmidt*, 372 S.E. 2d at 442. The Court of Appeals then concluded, however, that after the petitioner withdrew his consent, probable cause for his arrest existed, thereby validating the seizure and subsequent search.

On what basis did the Court of Appeals come to this remarkable conclusion? The Court stated:

> "Ralston knew that defendant was heading north after spending several days in Miami, a known drug source city; that he made a prior trip to Miami in the summer; that he made numerous calls from Miami to Chicago; and, most importantly, that he lied about his whereabouts. He also knew that certain statements made by defendant *sounded fishy*. Defendant said he was unemployed and that he was looking to purchase an automobile in Florida because they could be purchased cheaper there. Yet, the defendant was driving an expensive rental automobile and he had rented an automobile previously. Defendant said he was a student. Yet, he was traveling at a time when students are usually in school and he was taking a week off to drive to Miami. Moreover, defendant's statement that he was only given one key by the rental company was an obvious excuse to prevent Ralston from opening the trunk."

Schmidt, 372 S.E. 2d at 443. (Emphasis added).

It must be remembered, however, that before the Court of Appeals determined that these facts constituted probable cause to arrest, *no one* connected with this case ever considered that possibility.

Trooper Ralston, a ten year veteran of the Georgia Department of Public Safety (including seven years as a state trooper), with all of his experience using "drug interdiction" profiles, knew that he did not have probable cause to arrest Michael Schmidt until after the drug detection dog alerted. That is why the dog and the magistrate were summoned in the first place. Had there been probable cause to arrest, the dog or a magistrate would not have been necessary. The car could have been searched on the basis of probable cause, *United States v. Ross*, 456 U.S.

798, 102 S.Ct. 2157, 72 L. Ed. 2d 572 (1982), or as a search incident to a lawful arrest, *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L. Ed. 2d 768 (1981), or as an inventory search, *South Dakota v. Opperman*, 428 U.S. 364, 96 S.Ct. 3092, 49 L. Ed. 2d 1000 (1976). Trooper Ralston knew, however, that he did not have probable cause to arrest the petitioner at the time consent to search was withdrawn.

The magistrate, called to the scene by Trooper Ralston, knew that probable cause to arrest did not exist in this case until *after* the drug detection dog alerted. No arrest warrant ever issued, and the search warrant was not signed until *after* the alert. The District Attorney in this case has at no time argued that Trooper Ralston had probable cause prior to the drug detection dog's alert. Nor did the trial court ever suggest the existence of probable cause prior to the alert.

Yet, on the basis of facts insufficient for the law enforcement officer on the scene, insufficient for the magistrate on the scene, insufficient for the District Attorney, and insufficient for the trial court, four judges on the Court of Appeals somehow concluded that Trooper Ralston had probable cause to arrest the petitioner at the time he withdrew his consent to search. Trash in the back seat and "fishy" statements to an officer simply do not constitute probable cause to arrest within the meaning of that phrase under the Fourth Amendment.

This Court has held that law enforcement officers may rely on courier profiles in deciding whether to approach a suspect and ask questions or seek consent to search. But matching a profile, even in conjunction with an attempt to disassociate from a colleague will not in and of itself permit law enforcement officers to engage in a *Terry*

stop. *Reid v. Georgia*, 448 U.S. 438 (1980). Even if the suspect courier is clearly engaged in evasive conduct and says, "let's get out of here," only a brief investigative *Terry* stop is justified. *Florida v. Rodriguez*, 469 U.S. 544, 552-54 (1980) (Burger, C.J., Powell, J. and Blackmun, J., concurring). The profile, however, even when supplemented by suspicious statements and evasive conduct has never authorized a full-scale arrest. *See, e.g., Florida v. Royer*, 460 U.S. 491, 103 S.Ct. 1319, 75 L. Ed. 229 (1983).

The factors and circumstances relied upon by the Court of Appeals *may* create suspicion, particularly among agents "engaged in the often competitive enterprise of ferreting out crime," *Johnson v. United States*, 333 U.S. 10, 14, 68 S.Ct. 367, 92 L. Ed. 436 (1948), but in the case *sub judice*, those factors and circumstances were not sufficient to establish probable cause to detain petitioner until the arrival of a magistrate and a drug sniffing dog. Mere suspicion that a search will reveal contraband does not satisfy the requirement of probable cause.

The simple truth of the matter is that each factor upon which Trooper Ralston relied, while not inconsistent with a criminal course of conduct, was certainly not inconsistent with an innocent course of conduct. Trooper Ralston plainly and simply admitted that he did not have probable cause to detain Michael Schmidt when he testified at the motion to suppress:

> "All of these characteristics combined as a whole, not only, you know, just necessarily one item that you see, but as a whole, after these have been combined and added up, then they can determine, or for me be a *reason for suspicion.*" (Emphasis added).

The detection of crime is the function of law enforcement agents, while providing justice according to law is the function of the judiciary. The perception of each is

fashioned by the purpose served by each. It must therefore be, from time to time, as here, that what to an officer is probable cause is to a judge but an unreasonable hunch. Here, it was not the arresting officer's, but the Court of Appeals whose unreasonable hunch is being questioned. If permitted to stand, the decision below removes completely from the Fourth Amendment, as applied to the states by the Fourteenth Amendment, the requirement of probable cause. The petitioner respectfully urges this Honorable Court grant his Petition for Writ of Certiorari and consider the important issues raised by this appeal.

Respectfully submitted,

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APPENDIX

[372 S.E.2d 440 (Ga. App. 1988)]

SCHMIDT

v.

The STATE.

No. 76062.

Court of Appeals of Georgia.

July 7, 1988.

Rehearing Denied July 28, 1988.

Certiorari Denied Sept. 16, 1988.

Defendant was convicted in the Gordon Superior Court, White, J., of trafficking in cocaine, and he appealed. The Court of Appeals, McMurray, P.J., held that: (1) 30-minute detention of defendant, after he was stopped for speeding and withdrew consent to search of his vehicle following officer's expression of desire to search trunk, constituted arrest, but (2) arrest was supported by probable cause.

Affirmed.

Beasley, J., concurred specially and filed opinion.

Benham, J., dissented and filed opinion in which Carley and Sognier, JJ., joined.

McMURRAY, Presiding Judge.

Defendant was convicted of trafficking in cocaine and he appealed. Via four assignments of error, he challenges the trial court's denial of his motion to suppress evidence.

The evidence adduced at the motion to suppress hearing, viewed in favor of the State, is summarized as follows: In the early morning hours of November 4, 1986, Georgia

State Trooper Ralston observed a 1986 Thunderbird with an Illinois license plate heading northbound on Interstae 75. The automobile was travelling at 64 m.p.h. (the speed limit was 55 m.p.h.) so Ralston stopped it. The time was 2:18 a.m.

Defendant exited the automobile and stepped to the rear. He was advised he had been speeding and was asked to produce a driver's license and vehicle registration. Defendant gave Ralston a valid Illinois license; he also gave him a rental agreement for the Thunderbird.

Defendant told Ralston he was unemployed; that he was a college student in northern Illinois; and that he was returning from central Florida where he had gone to purchase an automobile. (Ralston testified that defendant told him he had been to Tampa and Orlando.) In this regard, defendant told Ralston that automobiles could be bought cheaper in Florida and that was why he went there.

Examining the rental agreement, Ralston observed that defendant rented the Thunderbird on October 29, 1986, and that was not the first automobile he had rented. He also noticed that the rental price of the automobile was $290 per week (plus 25 cents per mile after the first 200 miles per day) and that defendant put down a $300 cash deposit on the automobile.

Looking through the car windows, Ralston saw two road maps, a blanket and pillow, a small travelbag and fast food trash. He also observed a radar detector on the dash.

Ralston gave defendant a written warning for the speeding violation. He returned the driver's license and rental agreement to defendant.

Defendant was asked if he would give his consent to a search of the automobile. Although he said he was in a hurry, defendant gave oral permission for a search. The defendant signed a written consent to search form. The form was signed at 2:30 a.m.

Searching the automobile, Ralston obtained the road maps and found two motel bills. On the road maps, the

route from Chicago to Miami was highlighted. One motel bill showed that defendant stayed in Miami from October 31 until November 3, 1986, and that defendant made more than 20 telephone calls to Chicago during his stay. The other motel bill showed that defendant was in Miami for two days during the previous summer and that he made several calls to Chicago at that time.

Ralston removed the key from the ignition and went to open the trunk. The ignition key did not fit and Ralston asked defendant for the key to the trunk. According to Ralston, defendant replied that he was given only one key by the rental agency.

Ralston testified that in his experience, whenever a suspect failed to produce a key to the trunk, narcotics were ultimately found. (See, e.g., *Smith v. State*, 184 Ga.App. 304, 306, 361 S.E.2d 215.) Accordingly, Ralston pressed on, indicating that he was going to remove the rear seat to search the trunk. Defendant objected, expressing concern about the taking apart of a rental automobile.

Ralston explained that he could remove the rear seat simply, in a matter of minutes. Nevertheless, defendant withdrew his consent to search. Then, Ralston advised defendant that he would have to be detained until the arrival of a drug dog and a magistrate. Because defendant was not dressed warmly, Ralston suggested that he wait in the patrol car. Defendant did so. In Ralston's mind, defendant was no longer free to leave. The time was 2:45 a.m.

Approximately a half hour later, a drug dog and handler arrived. A magistrate was already on the scene. When the dog alerted, the magistrate executed a warrant to search the automobile. In short order, a large quantity of cocaine was discovered in the trunk. *Held:*

The fact that defendant was speeding authorized the initial stop by Ralston. *Minor v. State*, 180 Ga.App. 869, 870, 350 S.E.2d 783. The search of the interior of the rental automobile after the stop was performed legally pursuant to defendant's voluntary consent. *Smith v. State*,

184 Ga.App. 304(1), 361 S.E.2d 215, supra. When defendant revoked his consent, Ralston terminated the search as he was bound to do. See *Conley v. State*, 180 Ga.App. 662, 664, 350 S.E.2d 45. At that point, defendant was no longer free to leave. Was he justifiably detained or was he arrested?

In *Radowick v. State*, 145 Ga.App. 231, 237, 244 S.E.2d 346, the police received a lookout message for a truck with a camper on the back. When the vehicle was spotted, a police officer stopped it. Defendants were told they were suspected of transporting contraband and they were asked for permission to search the vehicle. Defendants did not say "yes," and they did not say "no." It was suggested that defendants wait in the patrol car. They were not free to leave. While defendants were detained, other officers arrived. They did not have a consent to search form. Finally, after defendants were detained over 40 minutes a consent to search form was secured and defendants executed it. On appeal, this court ruled that the detention of defendants went beyond the minimal intrusion authorized by *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L. Ed.2d 889, and amounted to an arrest.

In the case sub judice, defendant was detained for 30 minutes while the officer waited for the arrival of a drug dog and magistrate. During that period of time, defendant was not free to leave. As in *Radowick v. State*, 145 Ga.App. 231, 244 S.E.2d 346, supra, the detention of defendant constituted an arrest.

To say that the detention of defendant was a justifiable *Terry* stop stretches the imagination. After all, defendant had already been stopped and investigated. He produced identification, answered questions, and consented to a search of the interior of his automobile. Thus, the 30-minute detention of defendant by Ralston constituted an arrest. *Radowick v. State*, 145 Ga.App. 231, 244 S.E.2d 346, supra.

The State principally relies upon *United States v. Richards*, 500 F.2d 1025 (9th Cir. 1974), to support its conten-

tion that the detention of defendant did not constitute an arrest. In that case, the defendant consented to a search of his personal belongings on board an airplane suspected of being used to smuggle drugs. During the course of the search, a drug dog was called in. The dog alerted to marijuana and the defendant was arrested. Defendant was detained for an hour before his formal arrest. It was held that the defendant's detention did not amount to an arrest.

Richards is inapplicable. At no point in time did Richards withdraw his consent to search. In the case sub judice, on the other hand, it is clear that defendant's consent to search form was withdrawn and that defendant was detained nevertheless.

"Detention beyond that authorized by *Terry* [*Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889] is an arrest and, to be constitutional, such an arrest must be supported by probable cause. [Cit.]" *Williams v. State*, 251 Ga. 749, 792, 312 S.E.2d 40. Having determined that defendant was arrested after he withdrew his consent to search, we must decide whether Ralston had probable cause to make the arrest.

"A 'warrantless arrest' is constitutionally valid if, at the moment the arrest is made, the facts and circumstances within the knowledge of the arresting officers and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the accused had committed or was committing an offense. [Cits.]" *Callaway v. State*, 257 Ga. 12, 13(2), 14, 354 S.E.2d 118. See *Quinn v. State*, 132 Ga.App. 395, 396(1), 208 S.E. 2d 263. Thus, we look to the facts and circumstances to see if they warranted the conclusion that defendant was committing a crime at the moment he was arrested by Ralston. In so doing, we must bear in mind that probable cause concerns probabilities: " '. . . They are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.' (Cit.)" *Sanders v. State*, 235 Ga. 425, 440, 219 S.E.2d 768.

Ralston knew that defendant was heading north after spending several days in Miami, a known drug source city; that he made a prior trip to Miami in the summer; that he made numerous calls from Miami to Chicago; and, most importantly, that he lied about his whereabouts. He also knew that certain statements made by defendant sounded fishy. Defendant said he was unemployed and that he was looking to purchase an automobile in Florida because they could be purchased cheaper there. Yet, defendant was driving an expensive rental automobile and he had rented an automobile previously. Defendant said he was a student. Yet, he was travelling at a time when students are usually in school and he was taking a week off to drive to Miami. Moreover, defendant's statement that he was only given one key by the rental company was an obvious excuse to prevent Ralston from opening the trunk.

(At this juncture we note the State's contention that probable cause is also supported by defendant's withdrawal of consent at the moment when Ralston evidenced a willingness to remove the rear seat of the automobile. We decline to view the exercise of a constitutional right as a factor in determining probable cause. Accordingly, we have given no weight to the withdrawal of consent in making our probable cause determination.)

In our view, the particular facts and circumstances of the case sub judice were sufficient to establish probable cause for an arrest. Ralston was warranted in believing that defendant was transporting contraband in the trunk of the rental automobile. See *Reid v. State*, 179 Ga.App. 144, 345 S.E.2d 635. If follows that defendant was arrested legally and that the evidence subsequently seized was neither tainted nor inadmissible. See *Still v. State*, 149 Ga.App. 792, 256 S.E.2d 133. The trial court did not err in overruling defendant's motion to suppress evidence.

JUDGMENT AFFIRMED.

DEEN and BANKE, P.JJ., and POPE, J., concur.

BEASLEY, J., concurs specially.

BIRDSONG, C.J., and CARLEY, SOGNIER and BENHAM, JJ., dissent.

BEASLEY, Judge, concurring specially.

I agree that the officer did not offend the Federal Constitution by further detaining the defendant for a short time to await the dog. *United States v. Sharpe*, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985). The investigatory purpose of this brief restriction of defendant's freedom was authorized under the circumstances. The dog's reaction would either confirm or fail to confirm the officer's belief that defendant possessed drugs in the car trunk. In the event of the latter, Schmidt would be free to leave. In the event of the former, probable cause for the search would exist, and no one disputes that probable cause for his arrest would also be present.

Although I would agree with the majority's declining to view an exercise of the constitutional right to refuse to consent to a search, as a factor in determining probable cause, that is not exactly the situation here. Schmidt's partial withdrawal rendered his consent selective. As the encounter unfolded, his relinquishment of a constitutional right became limited, and that later restriction of the permission in my opinion may legitimately be considered as an additional factor warranting the further investigation and necessitating the extension of the detention.

BENHAM, Judge, dissenting.

While I am in full accord with the majority's determinations that appellant withdrew his consent to search and that his detention became an arrest, I cannot support the conclusion that the arrest was supported by probable cause to believe that appellant was committing a crime.

"Probable cause to arrest exists where, based on objective facts and circumstances, a man of reasonable caution would believe that a crime has been or is being committed.

[Cit.]" *Williams v. State*, 251 Ga. 749, 792(8)(a)(ii), 312 S.E. 2d 40 (1983). The question is whether, at the time appellant was arrested, "the objective facts known to the officer would justify issuance of a . . . warrant. . . ." *Love v. State*, 254 Ga. 697, 698, 334 S.E.2d 173 (1985). That an unemployed college student rents a car in northern Illinois in late October-early November, travels to southern Florida, makes telephone calls back to Illinois, and does not have a key to the trunk of his rental automobile does not lead a person of reasonable caution to believe that a crime is being committed. Too many unjustified conclusions have to be reached before one can say with any degree of certainty that the officer's suspicions of illegal activity evolved into probable cause to arrest. The fact that appellant was an unemployed student does not justify the conclusion that he could not afford to rent the car he was driving. Perhaps he was independently wealthy; perhaps his parents agreed to finance his trip to find an automobile. The fact that appellant was not attending classes for a week in mid-autumn does not justify the conclusion that he was engaged in illegal drug activity. Perhaps his school was closed for some type of break; perhaps appellant was engaged in some kind of independent study program. Even if classes were in session, if the fact that a college student skips school for a week to go to Florida constitutes probable cause to believe that he is engaged in illegal activity, then all young people driving cars with out-of-state tags in a beach area are subject to arrest. The officer in the case at bar, well trained in drug interdiction, detained appellant because he had *suspicions* and wanted a drug-sniffing dog to confirm those suspicions. It was only after the dog alerted to the presence of contraband that the officer applied to the attending magistrate for a warrant. Thus, in the officer's mind, he did not have the requisite probable cause to arrest appellant until the drug dog alerted, some 50 minutes after the officer had, in fact, arrested appellant.

"This court knows and fully appreciates the delicate and difficult task of those who are charged with the duty of

detecting crime and apprehending criminals, and it will uphold them in the most vigilant legal discharge of all their duties, but it utterly repudiates the doctrine that these important duties cannot be successfully performed without the use of illegal and despotic means. It is not true that in the effort to detect crime and to punish the criminal, 'the end justifies the means.' This is especially not true when the means adopted are violative of the very essence of constitutional free government. Neither the liberty of the citizen nor the sanctity of his home should be invaded without legal warrant [or probable cause]. Suspicion is no substitute for a legal warrant, and the badge of authority is the emblem of law and order, and gives no right to the wearer to arrest without warrant [and] imprison without authority." *Underwood v. State*, 13 Ga. App. 206, 213, 78 S.E. 1103 (1913).

I respectfully dissent from the affirmance of the trial court's denial of appellant's motion to suppress.

I am authorized to state that Judge CARLEY and Judge SOGNIER join in this dissent.

[Dated August 14, 1987]

IN THE
SUPERIOR COURT OF GORDON COUNTY
STATE OF GEORGIA

STATE OF GEORGIA	)	Indictment No. 4839
	)	
VS.	)	Charge: Trafficking In Cocaine
	)	
MICHAEL L. SCHMIDT, Defendant.	)	

ORDER ON MOTION TO SUPPRESS

A Motion To Suppress Evidence having been filed by the defendant, and the same having come on for Hearing on May 6, 1987; and evidence having been presented by both the State and the defendant; and after careful and conscientious consideration by the Court of all evidence presented, argument of counsel and brief submitted by Counsel for the Defendant:

NOW, this Court finds Trooper Ralston's stop of defendant's vehicle to be a valid stop; and, further, that defendant freely and voluntarily consented to the search of his vehicle. Therefore, defendant's Motion To Suppress Evidence is denied.

SO ORDERED, this 14th day of August, 1987.

/s/ JERE F. WHITE
Jere F. White
Judge, Superior Courts
Cherokee Judicial Circuit

No. 88-961 (2)

Supreme Court, U.S.
FILED
JAN 20 1989
JOSEPH E. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1988

MICHAEL L. SCHMIDT,

Petitioner,

vs.

STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of Georgia

BRIEF IN OPPOSITION FOR THE RESPONDENT

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23pp

QUESTION PRESENTED

I.

Whether this Court should decline to grant a Writ of Certiorari to examine the Georgia Court of Appeals' determination that the trial court correctly denied Petitioner's Motion to Suppress Evidence?

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No. 88-961

In The

Supreme Court of the United States

October Term, 1988

MICHAEL L. SCHMIDT,

Petitioner,

vs.

STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of Georgia

BRIEF IN OPPOSITION FOR THE RESPONDENT

PART ONE
(i)
STATEMENT OF THE CASE

The Petitioner, Michael L. Schmidt, was found guilty of trafficking in cocaine in the Superior Court of Gordon County in September, 1987. Pursuant to O.C.G.A. § 16-13-31; Ga. Code Ann. § 79A-811, Petitioner was sentenced to thirty (30) years imprisonment, twenty-five years to serve and the remainder on probation. Additionally, Petitioner was fined five hundred thousand dollars ($500,000). (R.4-5).

On direct appeal, the Court of Appeals determined that Petitioner was properly stopped, and properly arrested. *Schmidt v. State*, 188 Ga. App. 85, 372 S.E.2d 440 (1988). The Supreme Court of Georgia denied a Petition for Writ of Certiorari and denied Petitioner's Motion for Rehearing. Thereafter, Petitioner filed the instant Petition for Writ of Certiorari requesting that this Court review the decision of the Court of Appeals.

(ii)
STATEMENT OF FACTS

At Petitioner's bench trial conducted September 24, 1987, the parties stipulated to the evidence presented at the hearing on Petitioner's Motion to Suppress. The facts of the case as established by the evidence before the Court, and as succinctly reiterated on direct appeal by the Court of Appeals of Georgia, revealed that during the early morning hours of November 4, 1986, Petitioner was traveling northbound on Interstate 75 through Georgia. Georgia State Trooper Ralston observed that the Petitioner was traveling at a speed of 64 miles per hour.[1] Because Petitioner was traveling in excess of the speed limit, State Trooper Ralston stopped the Petitioner. The stop was made at 2:18 a.m. (Motion to Suppress transcript, hereinafter M.S.T., 9).

[1] The speed limit at the time was 55 mph.

[Petitioner] was advised he had been speeding and was asked to produce a driver's license and vehicle registration. [Petitioner] gave Ralston a valid Illinois license; he also gave him a rental agreement for the Thunderbird.

[Petitioner] told Ralston he was unemployed; that he was a college student in northern Illinois; and that he was returning from central Florida where he had gone to purchase an automobile. . . . In this regard [Petitioner] told Ralston that automobiles could be bought cheaper in Florida and that was why he went there. Examining the rental agreement, Ralston observed that [Petitioner] rented the Thunderbird on October 29, 1986 and that was not the first automobile he had rented. He also noticed that the rental price of the automobile was $290.00 per week (plus $.25 per mile after the first two hundred miles per day) and that [Petitioner] put down a $300.00 cash deposit on the automobile. . . .

Ralston gave [Petitioner] a written warning for the speeding violation. He returned the driver's license and rental agreement to [Petitioner].

[Petitioner] was asked if he would give his consent to a search of the automobile, although he said he was in a hurry, [Petitioner] gave oral permission for a search. Then [Petitioner] signed a written consent to search form. The form was signed at 2:30 a.m.

Searching the automobile, Ralston obtained the road maps and found two motel bills. On the road maps, the route from Chicago to Miami was highlighted. One motel bill showed that the [Petitioner] made more than twenty telephone calls to Chicago during his stay. The other motel bill showed that [Petitioner] was in Miami for two days during the previous summer and that he made several calls to Chicago at that time.

Ralston removed the key from the ignition and went to open the trunk. The ignition key did not fit and

> Ralston asked [Petitioner] for the key to the trunk. According to Ralston, [Petitioner] replied that he was given only one key by the rental agency. . . .
>
> [Ralston indicated] that he was going to remove the rear seat to search the trunk. [Petitioner] objected, expressing concern about the taking apart of a rental automobile.
>
> Ralston explained that he could remove the seat simply, in a matter of minutes. Nevertheless, [Petitioner] withdrew his consent to search. Then, Ralston advised [Petitioner] that he would have to be detained until the arrival of a drug dog and a magistrate. Because [Petitioner] was not dressed warmly, Ralston suggested that he wait in the patrol car. [Petitioner] did so. In Ralston's mind, [Petitioner] was no longer free to leave. The time was 2:45 a.m.
>
> Approximately a half-hour later, a drug dog and handler arrived. A magistrate was already on the scene. When the dog alerted, the magistrate executed a warrant to search the automobile.

Schmidt v. State, 188 Ga. App. at 85-86. Ralston's search revealed the presence of 4 kilos (4,002 grams) of cocaine. Petitioner was arrested for violating the Georgia Controlled Substances Act and, as presented above, Petitioner was duly convicted and sentenced in accordance with state law.

Further facts may be developed herein as necessary for a more thorough illumination of the issue presented to this Court.

PART TWO

REASONS FOR DENYING THE WRIT

A. The Court Of Appeals Of Georgia Properly Determined That There Was No Impropriety In The Stop, Detention, And Eventual Arrest Of The Petitioner For Transporting 4,000 Grams Of Cocaine.

The Petitioner contends that the trial court improperly denied his Motion to Suppress Evidence, particularly, the cocaine found in the vehicle driven by the Petitioner. Petitioner contends that the evidence should have been suppressed because the "prolonged" duration of detention after the Petitioner was stopped was not justified, and because no probable cause to arrest existed during the detention. Petitioner claims that he was, in effect, improperly arrested without probable cause during the detention period. Respondent asserts that the Court of Appeals of Georgia properly determined that the Motion to Suppress Evidence was without merit.

A review of the record in this case reveals that after a suppression hearing, the trial court denied the Motion to Suppress holding that Petitoner consented to the search of his automobile. (R.6). The Court of Appeals of Georgia determined that the stop, detention, and arrest of Petitioner was valid in that during the detention period probable cause existed for the arrest of the Petitioner. *Schmidt v. State*, 188 Ga. App. at 88. Respondent submits that contrary to Petitioner's assertions, the decision of the Court of Appeals does not abrogate any Fourth Amendment protection, but, rather, is consistent with long established precedent from this Court.

I.

The Fourth Amendment to the United States Constitution does not prohibit all searches and seizures, but only unreasonable searches and seizures. *See United States v. Sharp*, 470 U.S. 675, 682 (1985). The Court has, on numerous occasions, given guidance on the type of search and seizure which is permissible. In *Terry v. Ohio*, 392 U.S. 1 (1968), the Court determined that it would be permissible for an officer to conduct a limited search – a pat-down for weapons – for the protection of an officer investigating the suspicious behavior of an individual he believed to be armed and dangerous. The Court approved the limited search on facts which would not constitute probable cause to arrest based upon the balance between the public interest in law enforcement and safety as opposed to the individual's right to be free from arbitrary interference by law officers. *Terry v. Ohio*, 392 U.S. at 20-21.

In *Adams v. Willams*, 407 U.S. 143 (1972), the Court elaborated on the rule of law announced in *Terry v. Ohio*. The Court recognized that "a brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time." *Adams v. Williams*, 407 U.S. at 145-46. The Court noted, over a decade ago, that *Terry v. Ohio* and *Adams v. Williams* "established that in appropriate circumstances the Fourth Amendment allows a properly limited 'search' or 'seizure' on facts that do not constitute probable cause to arrest or to search for contraband or evidence of crime." *United States v. Brignoni-Ponce*, 422 U.S. 873, 881 (1975). Further, the Court

recognized that an officer is entitled to assess the facts and circumstances of a particular incident in light of his experience. *Id.* at 885.

Officers are permitted to rely upon their training and experience in that a trained law enforcement agent can perceive and articulate meaning and conduct which to the untrained observer would appear wholly innocent. *United States v. Mendenhall*, 446 U.S. 544, 563 (1980). Courts are implored not to ignore the considerable expertise of law enforcement officials in detecting criminal activity such as drug smuggling. *Id.* at 566. Law enforcement officials are entitled to assess the facts in light of their experience, and courts are implored not to ignore the expertise of law enforcement officials because, *inter alia*,

> [m]uch of the drug traffic is highly organized and conducted by sophisticated criminal syndicates. The profits are enormous. And many drugs, including heroin, may be easily concealed. As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement.

Id. at 561-62.

Realizing the difficulty of ferretting out crime, especially drug smuggling, and weighing the balance between public safety and an individual's right to be free from an unreasonable search and seizure, the Court has held that brief detention for limited investigation may be necessary on facts which will not amount to probable cause to arrest.

> Without such investigation, those who are innocent might be falsely accused, those who are guilty might wholly escape prosecution, and many crimes would

> go unresolved. In short, the security of all would be diminished.

United States v. Mendenhall, 446 U.S. at 554. Therefore, it is clear from the Court's opinions that not all seizures of a person must be justified by probable cause to arrest. *Florida v. Royer*, 460 U.S. 491, 498 (1983). Indeed, it is clear that reasonable suspicion of criminal activity will warrant an officer in temporarily detaining an individual for the purpose of conducting a limited investigation. *Florida v. Royer*, 460 U.S. at 498; *United States v. Brignoni-Ponce*. The limited detention for investigative purposes does not abrogate the protection of the Fourth Amendment in that law enforcement officials must conduct their limited investigation by the least intrusive means, and action approaching the condition of arrest is prohibited. *Dunaway v. New York*, 442 U.S. 200 (1979).

In *Florida v. Royer*, the Court made clear that an investigative detention must last no longer than what is necessary, and the means employed should be the least intrusive available to verify or dispel the officer's suspicion. 460 U.S. at 500.

In *United States v. Sharp*, the Court focused on the nature of the detention and those factors which would separate a permissible detention from an improper de facto arrest. The length of the detention is not necessarily controlling; it is not necessary for officers to allow stopwatches to govern a legitimate effort to detect criminal activity. Rather than focusing solely on time, the Court has "emphasized the need to consider the law enforcement purposes to be served by the stop as well the time reasonably needed to effectuate those purposes." *United States v. Sharp*, 470 U.S. at 685. In this regard, the Court

stated that common sense and ordinary human experience must govern over rigid criteria.

> If the purpose underlying a *Terry* stop – investigating possible criminal activity – is to be served, the police must under certain circumstances be able to detain the individual for longer than the brief time period involved in *Terry* and *Adams* [citation omitted].

United States v. Sharp, 470 U.S. at 685-86, *quoting Michigan v. Summers*, 452 U.S. 692 (1981). Accordingly, the length of the detention is not necessarily controlling. Rather, the Court is concerned with the events which occur during the detention.

As stated earlier, a permissible detention seeks to confirm or dispel an officer's suspicion in a short period of time in the manner least intrusive to the individual. *Florida v. Royer*, 460 U.S. at 500. However, the Court has recognized that during a prearrest detention, it may be necessary for officers to graduate their response to the demands of the particular situation, and to additional information received during investigation. *See United States v. Sharp*, 470 U.S. at 687.

A review and summary of the above-cited cases shows a clear and consistent policy from the Court. First, the Fourth Amendment does not prohibit all searches and seizures, only unreasonable ones. Second, it is permissible for law enforcement officials to detain an individual based upon reasonable suspicions to conduct a limited investigation which should be no more intrusive than is necessary. Third, law enforcement officials need not be tied to a specific time period; the circumstances and actions of the officers will determine the need for detention and whether the least intrusive means was utilized.

Fourth, somewhat longer detention may be necessary based upon an officer's graduated response to the demands of the particular situation. Finally, an officer is allowed to rely upon his training and experience in gauging whether a stop is necessary, and courts should not ignore an officer's experience in determining whether a brief detention and limited investigation are necessary. Of course, the overriding concern in application of the rules set forth by the Court is that an individual's Fourth Amendment right to be free from unreasonable search and seizure not be violated. Accordingly, a detention which is in effect a de facto arrest, or actions taken by an officer which are intrusive considering the circumstances of the case, are not permissible.

II.

In the instant case, Respondent submits that Trooper Ralston properly stopped, detained, and arrested the Petitioner in accordance with longstanding precedent from the Court.[2]

A. The Stop

In the Petition for Writ of Certiorari, the Petitioner does not dispute the propriety of Trooper Ralston's initial

---

[2] The Court of Appeals held that the detention of the Petitioner was not a justifiable *Terry v. Ohio* stop. While Respondent concurs in the decision of the Court of Appeals, to wit, that the trial court properly denied the Motion to Suppress, Respondent also shows that the detention of the Petitioner was proper under *Terry v. Ohio* and its progeny.

stop of the Petitioner. A review of the facts as reported by the Court of Appeals reveals that the stop was proper. During the early morning hours of November 4, Trooper Ralston observed Petitioner's car exceeding the speed limit. Because Petitioner was not abiding by the speed limit, Trooper Ralston properly stopped Petitioner. At the hearing on the Motion to Suppress, Petitioner did not contest Trooper Ralston's determination that he was speeding. (MST-111).

Petitioner was stopped for speeding. Accordingly, the *Terry v. Ohio* requirement of reasonable suspicion for the initial stop does not apply in this case. In accordance with the above facts and analysis, Respondent submits that Petitoner was properly stopped.

B. The Detention

After Petitioner was stopped for speeding, he informed Trooper Ralston that he was unemployed, that he was a college student in northern Illinois, and that he was returning from central Florida where he had gone to purchase an automobile. Trooper Ralston examined Petitioner's license and the car rental agreement. Additionally, the Trooper observed the inside of Petitioner's vehicle which contained road maps, a small travel bag, and fast food trash. (MST-57). Petitioner was issued a warning citation for speeding and Petitioner's license and rental agreement were returned to him. Because Trooper Ralston's suspicions were aroused from the conversation with the Petitioner, he asked Petitioner for permission to search the vehicle. Petitioner voluntarily consented to a search of the vehicle and signed a waiver

form. (MST-12-14). While Trooper Ralston searched the inside of the vehicle, for the comfort of the Petitioner, who was not dressed warmly, Trooper Ralston allowed Petitioner to sit in the patrol vehicle. During the search of Petitioner's vehicle, Trooper Ralston observed two maps which highlighted routes from Chicago to Miami. Additionally, Trooper Ralston observed two motel receipts, one of which indicated Petitioner stayed in Miami from October 31, 1986 to November 3, 1986. (MST-24). The motel receipt revealed that Petitioner made numerous calls to the Chicago area while in Miami. The second motel receipt revealed that Petitioner had previously visited Miami and, while there on the previous occasion, made several calls to Chicago.

In order to complete a thorough search of the vehicle, which search was at this point consented to by the Petitioner, Trooper Ralston removed the key from the ignition and attempted to unlock the trunk. The ignition key did not unlock the trunk of the vehicle. The Petitioner was asked for the trunk key and Petitioner responded that the rental company had only given him one key. (MST-17).[3] In order to effectuate a thorough search of the automobile, Trooper Ralston informed the Petitioner that he could gain entrance to the trunk area by removing two bolts from the back seat. However, Petitioner objected and, in effect, withdrew his consent to search. Trooper Ralston advised Petitioner that he would have to be detained for further investigation. (MST-18). It is at this

---

[3] At the hearing on the Motion to Suppress, Petitioner claimed that he lost the key. (MST-116).

point, approximately 2:45 a.m., that the detention of which Petitioner complains begins. The detention only begins at this point in that the Trooper made a valid stop for a traffic violation which was followed by a search of Petitioner's vehicle pursuant to Petitioner's consent in an apparent spirit of voluntary cooperation. *See Sibron v. New York*, 392 U.S. 40 (1968). Petitioner was detained at that point when he objected to a further search of his vehicle.

In order to determine if the detention was proper, the Court of Appeals of Georgia considered what facts the experienced trooper knew at the time of the detention.

> Ralston knew that [Petitioner] was headed north after spending several days in Miami, a known drug-source city; that [Petitioner] made a prior trip to Miami in the summer; that [Petitioner] made numerous calls from Miami to Chicago; and, importantly, that [Petitioner] lied about his whereabouts. [Trooper Ralston] also knew that certain statements made by [Petitioner] sounded fishy. [Petitioner] said he was unemployed and that he was looking to purchase an automobile in Florida because they could be purchased cheaper there. Yet, [Petitioner] was driving an expensive rental automobile and he had rented an automobile previously. [Petitioner] said he was a student. Yet, [Petitioner] was traveling at a time when students are usually in school and he was taking a week off to drive to Miami. Moreover, [Petitioner's] statement that he was only given one key by the rental company was an obvious excuse to prevent Ralston from opening the trunk.

Schmidt v. State, 188 Ga. App. at 88. In addition to the above, in Trooper Ralston's experience in detecting crime, he had observed that in instances where an individual

failed to produce a trunk key, narcotics were usually found in the vehicle. (MST-27).

Considering the above factors, and based upon his experience, Trooper Ralston requested a drug detection dog and a magistrate. Both arrived on the scene within thirty (30) minutes of the time Petitioner was detained. Shortly after the drug detection dog arrived, he "alerted" for the presence of narcotics in Petitioner's vehicle.

Respondent submits that the brief unintrusive detention of the Petitioner was proper and in accord with decisions of this Court. As was noted in subsection I, an investigative detention must last no longer than what is necessary for the purpose of the stop. The methods employed during the detention should be the least intrusive means available. *Florida v. Royer,* 460 U.S. at 500. In the instant case, once Petitioner objected to the further search of his vehicle, Trooper Ralston ceased his search and called for a magistrate and drug detection dog. Both arrived in less than thirty (30) minutes. Respondent submits that the time frame involved, thirty (30) minutes, did not convert the detention to a de facto arrest in that the dog handler and the magistrate were called during the early morning hours regarding the stop of the Petitioner. According to the dog handler, it took twenty (20) minutes to travel from his location to where Trooper Ralston and the Petitoner were located. (MST-91). After being awakened at 2:45 a.m., he arrived at 3:11 a.m. It is evident from the above facts that the dog handler acted expeditiously after receiving the call from Trooper Ralston. As for the use of a drug detection dog, Respondent notes that on a previous occasion, the Court has recognized that use of a trained drug detection dog may be an expeditious, yet

unintrusive way of determining the presence of narcotics. *Florida v. Royer,* 460 U.S. at 505.

In addition to acting expeditiously in contacting the magistrate and dog handler, Respondent notes that during the detention of the Petitioner, Petitioner was not abusively handled, there was no intrusive probing into Petitioner's vehicle, and Trooper Ralston made arrangements for Petitioner's comfort while awaiting the arrival of the magistrate and dog handler.

Respondent submits, based upon the above, that (1) based upon his experience, conversation with the Petitioner and items found in Petitioner's car during a consensual search, Trooper Ralston determined that Petitioner could be involved in criminal activity; (2) after detaining Petitioner, Trooper Ralston acted expeditiously and decisively in attempting to minimize the intrusion imposed upon Petitioner while furthering the investigation; (3) Trooper Ralston pursued a course of action which would resolve the issue either for or against the Petitioner in the least intrusive means; and (4) the entire length of the detention, thirty (30) minutes, was due in part to the time of the incident, i.e., the early morning hours, and the length of time necessary for the dog handler to arrive at the scene. For all of the above reasons, it is apparent that the detention in the instant case is distinguishable from a traditional arrest. Accordingly, Respondent submits that, in line with this Court's decision in *United States v. Sharp, Florida v. Royer,* and other cases cited herein, the detention of the Petitioner was appropriate.

C. The Arrest

After the drug detection dog alerted for the presence of narcotics in Petitioner's vehicle, the magistrate issued a search warrant. Pursuant to the search warrant, Trooper Ralston removed the back seat of Petitioner's vehicle and found 4 kilos of cocaine in the trunk. Thereafter, Petitioner was arrested.

Because the search warrant was issued when a reliable drug detection dog alerted for the presence of narcotics, and because of the discovery of cocaine in Petitioner's trunk, Respondent submits that probable cause for the arrest of the Petitioner existed.

III.

In its decision affirming the trial court's denial of the Motion to Suppress, the Court of Appeals held that a thirty (30) minute detention of the Petitioner by Trooper Ralston constituted an arrest. Further, the Court of Appeals determined that "[t]he particular facts and circumstances of the case . . . were sufficient to establish probable cause for an arrest." *Schmidt v. State*, 188 Ga. App. at 88. While Respondent does not disagree with the Court of Appeals ultimate decision, i.e., that the Motion to Suppress was properly denied, Respondent submits that pursuant to this Court's decisions as cited above, the detention of the Petitioner was appropriate. Because the ultimate decision of the Court of Appeals of Georgia was correct, this Court should not grant certiorari. As stated in *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 566 (1977),

> [o]ur power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of the federal laws, our review would amount to nothing more than an advisory opinion.

See also Herb v. Pitcairn, 324 U.S. 117 (1945).

Because the detention of the Petitioner prior to his arrest was appropriate, Respondent submits that this Court need not consider the issue of whether probable cause existed during the detention period. If the Court were to consider this issue, it would, in fact, be rendering an advisory opinion which would not affect the judgment rendered by the state court.

CONCLUSION

It is evident from a review of the record that Trooper Ralston properly stopped, detained, and ultimately arrested the Petitioner. Accordingly, the Court of Appeals' decision upholding the trial court's denial of Petitioner's Motion to Suppress was proper.

This Court should refuse to grant the Writ of Certiorari to the Court of Appeals of Georgia as it is manifest that there exists for review by this Court no substantial federal question not previously decided by the Court. Additionally, the decision sought to be reivewed is in accord with applicable and recent decisions of the Court.

Respectfully submitted,

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